

National Police Association
8710 Bash Street #501692
Indianapolis, IN 46250
302-469-1765

December 23, 2018

Office of the Bar Counsel
c/o Constance V. Vecchione, Bar Counsel
99 High Street, 2nd Floor
Boston, Massachusetts 02110

In re: Formal Complaint and Demand for Investigation of Alleged Attorney Misconduct by Suffolk County District Attorney-Elect, Ms. Rachael Rollins

Ms. Vecchione,

The National Police Association (“NPA”), is a 501(C)3 non-profit organization founded to educate supporters of law enforcement in how to help police departments accomplish their goals. As part of that mission statement, it is incumbent upon NPA to appropriately report public concerns related to issues and instances of conduct that adversely affect the broad arenas of public health and safety due to the affirmative actions or omissions of those entrusted to ensure the safety and protection of the public. It is for this reason and others as described *infra* that this “Complaint and Demand for Investigation of Alleged Attorney Misconduct by Suffolk County District Attorney-Elect, Ms. Rachael Rollins” (“Complaint”) is hereby made.

While the NPA congratulates Suffolk County District Attorney-Elect, Rachael Rollins (“Rollins”) on her victory in the general election held on November 6, 2018, to serve as the next district attorney for Suffolk County, Massachusetts, her representations to the public, commitments to the Suffolk County District Attorney’s Office and reckless disregard for the laws enacted by the Massachusetts General Assembly, mandate that this Complaint be made. More specifically, throughout Rollins’ campaign, Rollins represented to the public that Rollins, regardless of what laws were in place and regardless of the rule of law itself, would affirmatively enact policy changes that directly, adversely and will foreseeably impact the safety and well-being of those that she is soon charged to represent¹ in her official capacity as District Attorney. Even more specifically, Rollins details several policies on her campaign website² that she is

¹ The term “represent” should not be construed to mean that Rollins has an attorney-client relationship with the public.

² <https://rollins4da.com/policy/>

affirmatively declaring will be implemented. Of note, is Rollins' policy towards enforcing and prosecuting the laws of Massachusetts.³

As a brief aside, before turning to the basis of the Complaint, it is critically necessary to explain the practical reality of any implementation of Rollins' policies. First and foremost, by openly declaring that certain laws will not be prosecuted if violated,⁴ Rollins has incited, and in-effect authorized certain illegal conduct that runs contrary to law. This incitement necessarily serves as both an incentive and inducement for lawlessness on the fronts of these criminal violations. Thus, the law-abiding citizens, who are aware of Rollins' policies are likely to suffer a chilling effect of both increased criminal conduct and lack of societal protection. Law-breaking citizens, who are aware of Rollins' policies are foreseeably going to be more comfortable, brazen and even incentivized to commit the enumerated specific criminal violations, all the while knowing that District Attorney-elect Rollins' "default" preference is not to prosecute them for their unlawful conduct.

Secondarily, but nevertheless closely intertwined with the first principle is the question of whether law enforcement will be able to effectively and efficiently "serve and protect" all citizens of Suffolk County, Massachusetts. Local and state police are the true first-response units on almost all criminal fronts. The public relies on the effective and efficient administration of law enforcement authority in both the protection of the public and the pursuit of justice for those who violate the laws. Rollins' policy stands at odds with the oath that all law enforcement willingly take and that Rollins too is soon to retake, which is to "faithfully execute and defend the laws of Massachusetts and the Constitutions of both Massachusetts and the United States." Law enforcement may not and should *never* turn a blind-eye to criminal conduct. Yet, Rollins' unwillingness to treat all laws enacted by the Commonwealth of Massachusetts equally and as

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. According to the policy statements made by Rollins, Rollins promises that the "default" determination will be to not prosecute the following crimes despite the fact that each of these codified crimes were lawfully enacted by the Massachusetts legislature: Trespassing; Shoplifting (including offenses that are essentially shoplifting but charged as larceny); Larceny under \$250; Disorderly conduct; Disturbing the peace; Receiving stolen property; Minor driving offenses, including operating with a suspend or revoked license; Breaking and entering — where it is into a vacant property or where it is for the purpose of sleeping or seeking refuge from the cold and there is no actual damage to property; Wanton or malicious destruction of property; Threats — excluding domestic violence; Minor in possession of alcohol; Drug possession; Drug possession with intent to distribute; and certain resisting arrest charges.

⁴ Certainly, the immediate response to this assertion is that Rollins' did not state as a policy that she would *never* prosecute the above-referenced crimes and that the "default" decision is merely to decline prosecution, as any reasonable person would interpret, the choice of language utilized by Rollins very clearly sends the same message.

enacted by the Commonwealth of Massachusetts leaves law enforcement susceptible to confusion, adverse legal action and at worst – a danger of not meeting their oath, sworn to by each of them prior to adorning any badge. These real-life consequences of Rollins’ policies make for real-life concerns about her fitness as both a prosecutor and an attorney.

Turning back to the basis of this Complaint, the Massachusetts’ Office of the Bar Counsel, has as its mission statement in relevant part, “to protect the public from unethical conduct by attorneys and to preserve and enhance the integrity and high standards of the bar.”⁵ Rollins was admitted to the Massachusetts Bar on January 29, 1999.⁶ As an admitted and licensed attorney in the State of Massachusetts, Rollins is required to adhere to the Massachusetts Rules of Professional Conduct (herein cited as “Mass R. Prof. C., Rule”). The Massachusetts Rules of Professional Conduct have been modeled after the American Bar Association’s Model Rules of Professional Conduct, herein (“ABA Rules”).⁷ Rollins’ “policy statements” place her in the precarious position of violating both the ABA Rules and/or the Massachusetts Rules of Professional Conduct, again, modeled after the ABA Rules. More specifically, should Rollins hold true to her affirmative representations made in anticipation of becoming the next elected Suffolk County District Attorney concerning her new “policy” regarding the laws of Massachusetts and their application, then Rollins’ in her capacity as a “prosecutor” has so grossly departed from her ethical obligations that discipline is mandator.⁸

Alternatively, and in the unlikely event that Rollins chooses not to implement her “policies” and decides to actually enforce the law of the Commonwealth of Massachusetts within the normal prosecutorial function(s), then Rollins has in effect lied to the voting public of Massachusetts. A lawyer who willfully or recklessly misrepresents what that lawyer knows to be false is a lawyer that categorically need not further belong to such a learned and noble profession.

As a guide for determining just how far outside the professional obligations and standards of a prosecutor that the citizens of Suffolk County, Massachusetts should expect and deserve from

⁵ https://www.massbbo.org/Who_We_Are_OBC_ACAP#OBC

⁶ Attorney No.: 641972

⁷ Massachusetts adopted the ABA Rules of Professional Conduct on June 9, 1997.

⁸ The NPA understands that Rollins does not assume the role of District Attorney until January 1, 2019, which might make this Complaint “premature.” However, as stated in the Complaint, Rollins’ anticipated conduct based upon her repeated assertions leaves little doubt as to the foreseeability of the consequences of her actions. As such, the unique aspect of this Complaint is that the Massachusetts Office of Bar Counsel is in the position of preventing harm rather than reacting to it. An opportunity that the Massachusetts Office of Bar Counsel should welcome.

Rollins, we turn to the ABA's Criminal Justice Standards for the Prosecutor Function.^{9 10} Standard 3-1.2(b) provides the following:

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants

ABA C.J. Standard 3-1.2(b).

Here, Rollins may rely on the language of the Standard that speaks to her decisions not to prosecute as “exercising discretion to not pursue criminal charges in appropriate circumstances.” However, Rollins’ policies do not provide for any such latitude. Rollins’ decision not to prosecute crimes, merely because they are a specific type of crime, without any further consideration of circumstances, is a severe departure from the overwhelming obligation that Rollins has to *increase public safety*. Beyond Standard 3-1.2(b), it appears that Rollins’ conduct is in further violation of the following Standards; Standard 3-1.3;¹¹ 3-1.4;¹² 3-1.6;¹³ and 3-1.7(f).¹⁴

As to the Massachusetts Rules of Professional Conduct, Rollins’ conduct blatantly violates her fundamental duties in both Rollins’ private and public capacity as an attorney. *See Mass R. Prof. C., Preamble* (“A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal

⁹ A complete copy of the Criminal Justice Standards for the Prosecution Function, 4th Ed., pub., Feb. 13, 2015; can be reviewed at the following link:

https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/

¹⁰ NPA acknowledges that these standards are not a basis for imposing discipline upon Rollins, but do serve as “aspirational goals” that Rollins will and/or has already failed miserably to obtain.

¹¹ Rollins’ policies do not serve the public’s interest, but instead is contrary to those public interests.

¹² Standard 3-1.4 and its subparts speak to Rollins’ duties of candor in her prosecutorial role. Should Rollins renege upon her commitments than her violations of this rule become self-evident.

¹³ Improper Bias – Rollins’ conduct clearly demonstrates a political bias in the performance of her legal and ethical obligations. This political bias manifests itself through racial, socio-economic and age biases and criterion that Rollins considered when determining the implementation of these policies.

¹⁴ Standard 3-1.7(f) provides the following: “The prosecutor should not permit the prosecutor’s professional judgment or obligations to be affected by the prosecutor’s personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.”

affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.”). The policy decisions to be implemented by Rollins’ serve no legitimate purpose other than to run-afoul to broader and more controlling public policy, namely those public policy decisions framed and enacted through the laws of the Commonwealth of Massachusetts. Rollins’ role as District Attorney for Suffolk County is no substitute for the role and obligations that control the Massachusetts Legislature, no matter how much Rollins may wish to the contrary. Further, Rollins’ blatant disregard for the legal system, specifically the laws of Massachusetts, is further violative of Rollins’ professional obligations.

Turning to Rollins’ role as a prosecutor, we direct the Office of Bar Counsel to Mass. R. Prof. C., Rule 3.8, *et seq.* Admittedly, a prosecutor has no official obligation to prosecute *all* crimes. To have such an obligation would ruin the common law principles of prosecutorial discretion. However, the inverse is also true. Specifically, to suggest that a prosecutor can decline to prosecute *all* crimes is equally afoul to the principle of prosecutorial discretion. Indeed Rule 3.8(a) provides that a prosecutor in a criminal action shall “refrain from prosecuting where the prosecutor lacks a good faith belief that probable cause to support the charge exists, and refrain from threatening to prosecute a charge where the prosecutor lacks a good faith belief that probable cause to support the charge exists or can be developed through subsequent investigation.” While the rule does not explicitly dictate when a prosecutor shall prosecute, the reasonable and ethical deduction should be based upon the implicit nature of the rule in that a prosecutor in a criminal action shall prosecute where “the prosecutor has a good faith belief that probable cause to support the charge exist . . .”

Moreover, Rollins’ policy positions serve no legitimate purposes of prosecution. As detailed above, Rollins’ policy positions are illegitimate, contrary to law, contrary to her ethical obligations as an attorney and further a clear and immediate danger to the

public's overall health and well-being. Rollins' communication of these policies seems to run afoul to Mass. R. Prof. C., Rule 3.8(f)(1).¹⁵

While it is time to bring this Complaint to a close and if nothing further is to come of this Complaint other than its filing, the NPA can rest assured that it has brought light to the concerns of the citizens of Suffolk County, Massachusetts. Concerns that are echoed by dozens, if not hundreds of Rollins' fellow attorney colleagues in Massachusetts. Concerns that should the Office of Bar Counsel disregard in the same manner that Rollins has already disregarded her present and future obligations as an attorney, the greatest suffering to be endured is by the men and women in law enforcement that will be faced with an impossible decision – ignore the oath they took due to an attorney-politician's unwillingness to adhere to the same standards as each of them have sworn to follow, or jeopardize their own professional and personal livelihoods by adhering to Rollins' policies, subjecting law enforcement officials to danger, litigation and all-around confusion as to how they are supposed to serve and protect, when the rule of law no longer protects all citizens.

On behalf of the NPA, thank you in advance for your time and consideration of this matter. We look forward to your review and investigation of Rachael Rollins for the alleged violations of the Massachusetts Rules of Professional Conduct.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ed Hutchison', with a stylized flourish at the end.

Ed Hutchison, President

National Police Association

¹⁵ Rule 3.8(f)(1) provides: except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose: (1) refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.